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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,985	03/22/2004	Hiroyuki Kato	0275M-657USB	1367
27572	7590	11/08/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C.			LUONG, VINH	
P.O. BOX 828			ART UNIT	
BLOOMFIELD HILLS, MI 48303			PAPER NUMBER	

3682

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/805,985

Applicant(s)

KATO, HIROYUKI

Examiner

Vinh T. Luong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 August 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 7-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-3, 7, 10-13, 19 and 21-23 is/are rejected.  
7) ☒ Claim(s) 8, 9, 14-18 and 20 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Vinh T. Luong  
Primary Examiner

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☒ Other: Attachment.

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1. The Amendment filed on August 23, 2005 has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-3, 7, 10-13, 19, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art (Figs. 1-2B) in view of Yamada (Japanese Utility Model No. 1-162847 cited by Applicant).

Regarding claim 1, admitted prior art teaches an elongated footrest plate 1 comprising a footrest side; and a rear side 5 opposite to said footrest side, said rear side 5 being provided with a pair of clips 6 and 7 to be fixedly received into a pair of corresponding mounting holes 9 and 10 formed in a workpiece (unnumbered), said pair of clips 9 and 10 separable by a predefined distance in a longitudinal direction of said footrest plate 1, and aligned with said mounting holes 9 and 10, each of said clips 9 and 10 having a rectangular cross-sectional insertion portion insertable into one of said mounting holes 9 and 10, each of said mounting holes 9 and 10 formed in a rectangular shape.

Admitted prior art teaches the invention substantially as claimed. However, admitted prior art does not teach the reference protrusion.

Yamada teaches a reference protrusion 17 (Fig. 1. See Attachment) at an intermediate position between a pair of clips 17 (Att.) in the longitudinal direction, said reference protrusion 17 being insertable into a rectangular reference hole 19 formed in the workpiece 16. On the one hand, the rectangular shape of the protrusion is considered as a matter of choice in design since the claimed structures and the function they perform are the same as the prior art. *In re Chu*, 66 F.3d 292, 36 USPQ2d 1089 (Fed. Cir. 1995) citing *In re Gal*, 980 F.2d 717, 719, 25 USPQ2d

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1076, 1078 (Fed. Cir. 1992). On the other hand, since Yamada teaches the rectangular reference hole 19, thus, to form the rectangular shaped protrusion to couple with the rectangular reference hole of Yamada would flow logically from Yamada's rectangular reference hole.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the rectangular reference protrusion at the intermediate position between the pair of clips of the admitted prior art in order to couple with the rectangular reference hole in order to prevent rotation of the first and second clips as taught or suggested by Yamada.

Regarding claim 2, each of the insertion portions of the pair of clips of admitted prior art defines a pair of longitudinal sides, each of the longitudinal sides of admitted prior art extends in the longitudinal direction and has a length shorter than each longitudinal side of the mounting holes 9 and 10 extending in the longitudinal direction by a clearance 11.

Regarding claim 3, a second clearance defined between the reference protrusion 17 of Yamada and Yamada's reference hole 19 is less than the clearance between the length of the longitudinal sides of Yamada's clips 17 and the longitudinal side of Yamada's mounting holes 18.

Regarding claim 7, admitted prior art teaches an elongated footrest plate, comprising a first side and an oppositely facing second side; first and second clips 6 and 7 extendable from the second side, each of the first and second clips 6 and 7 including a rectangular shaped portion sides longer than a second parallel pair of sides.

Yamada teaches a reference protrusion 17 (Att.) at an intermediate position between a pair of clips 17 (Att.) in the longitudinal direction, said reference protrusion 17 being insertable

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into a rectangular reference hole 19 formed in the workpiece 16. On the one hand, the rectangular shape of the protrusion is considered as a matter of choice in design since the claimed structures and the function they perform are the same as the prior art. *In re Chu*, supra. On the other hand, since Yamada teaches the rectangular reference hole 19, thus, to form the rectangular shaped protrusion to couple with the rectangular reference hole of Yamada would flow logically from Yamada's rectangular reference hole.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the rectangular reference protrusion at the intermediate position between the pair of clips of the admitted prior art in order to couple with the rectangular reference hole in order to prevent rotation of the first and second clips as taught or suggested by Yamada.

Regarding claim 10, each of the first and second clips 6 and 7 of admitted prior art define an integral co-molded extension of the footrest plate 1.

Regarding claim 11, the protrusion 17 of Yamada 17 (Att.) is centrally positioned between the first and second clips 17 and further defines an integrally formed extension of the second side of the footrest plate 11.

Regarding claim 12, see admitted prior art's a plurality of raised, substantially circular protrusions 3 extending outwardly from the first side.

Regarding claim 13, admitted prior art teaches a footrest plate system, comprising a footrest plate having a first side and an oppositely facing second side, first and second clips 6 and 7 extendable from the second side, each of the first and second clips including a rectangular shaped portion having a first parallel pair of sides longer than a second parallel pair of sides.

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Yamada teaches a protrusion 17 (Att.) extending from the second side, the protrusion centrally positioned between the first and second clips 17 (Att.), the protrusion including a body; and a workpiece 16 having first, second and third rectangular-shaped mounting apertures 18 and 19 (Att.), the first mounting aperture 18 operable to receive portion of the first clip 17 and the second mounting aperture 18 operable to receive the second clip 17; wherein the third aperture 19 is centrally positioned between the first and second apertures 18, and is oriented to receive the protrusion 17, engagement of the protrusion 17 with the third aperture 19 being operable to substantially prevent rotation of the first and second clips 17 relative to the workpiece 16.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the rectangular reference protrusion at the intermediate position between the pair of clips of the admitted prior art in order to couple with the rectangular reference hole in order to prevent rotation of the first and second clips as taught or suggested by Yamada.

Regarding claim 19, a predefined distance operably separating the first and second clips 17 of Yamada; wherein the first and second mounting apertures 18 of Yamada are separable by the predefined distance to operably permit engagement of the first and second clips 17 with the first and second mounting apertures 18.

Regarding claim 21, see regarding claim 13 above.

Regarding claims 22 and 23, Yamada's first and second clips 17 and protrusion comprise a co-molded integral extension of the footplate 11 (see Figs. 3 and 4). Note that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. See *In re Morris*, 43 USPQ2d 1753, 1757 (CAFC 1997) and cases cited therein.

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4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-3, 7, 10-13, 19, and 21-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,910,724 (hereinafter "Pat.'724) in view of Yamada.

Regarding claims 1-3, 7, 10-13, 19, and 21-23, claims 1-3 of Pat.'724 claim, *inter alia*, first and second sides, rectangular shaped first and second clips, rectangular shaped first and second mounting holes, and first and second clearances. However, claims 1-3 of Pat.'724 does not claim the reference protrusion.

Yamada teaches a reference protrusion 17 (Att.) at an intermediate position between a pair of clips 17 (Att.) in the longitudinal direction, said reference protrusion 17 being insertable into a rectangular reference hole 19 formed in the workpiece 16. On the one hand, the rectangular shape of the protrusion is considered as a matter of choice in design since the claimed structures and the function they perform are the same as the prior art. *In re Chu, supra*.

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On the other hand, since Yamada teaches the rectangular reference hole 19, thus, to form the rectangular shaped protrusion to couple with the rectangular reference hole of Yamada would flow logically from Yamada's rectangular reference hole.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the rectangular reference protrusion at the intermediate position between the pair of clips claimed in Pat.'724 in order to couple with the rectangular reference hole in order to prevent rotation of the first and second clips as taught or suggested by Yamada.

6. Claims 8, 9, 14-18, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Kato'643 (rectangular hole 8 in Fig. 3C), Matsushita (Figs. 1-8), and Fukawatase et al. (Figs. 1-10).

9. Applicant's arguments filed on August 23, 2005 have been fully considered but they are not persuasive.

The previous rejection of claims 1-6 under 35 USC 103 as being unpatentable over admitted prior art in view of Hofmann is withdrawn in view of Applicant's amended claims and new claims. Applicant's arguments with respect to claims 1-3 and 7-23 have been considered but are moot in view of the new ground(s) of rejection.



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10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Luong

November 7, 2005



Vinh T. Luong  
Primary Examiner

# **ATTACHMENT**

⑫ 公開實用新案公報 (U) 平1-162847

⑤Int. Cl. \*

**識別記号**

室内整理番号

④公開 平成1年(1989)11月13日

**B 60 R 13/04**  
**F 16 B 5/06**

**Z-6766-3D**  
**Y-8714-3J**

審査請求 未請求 請求項の数 1 (全2頁)

⑤考案の名称      ガーニツシュの取付構造

②実 願 昭63-59273

②出 願 昭63(1988)4月30日

⑦考案者 山田 正 美 愛知県刈谷市一里山町金山100番地 トヨタ車体株式会社  
内

⑦出 願 人 トヨタ車体株式会社 愛知県刈谷市一里山町金山100番地

## ⑦実用新案登録請求の範囲

ガーニツシュの裏面に複数個のリテーナを固着し、このリテーナに設けた長溝に合成樹脂製クリップの頭部を嵌挿するとともに、このクリップの係止脚を取付部材に設けた係合孔に係止することによりガーニツシュを取付部材に取付けるための構造において、前記リテーナにすべて同一方向に向けた切欠き溝を設け、その中の少なくとも一つはその切欠き溝の奥から直角方向に屈曲したほぼL字状の切欠き溝とし、一方前記取付部材の係合孔は、前記L字状の切欠き溝に対応する係合孔を除いた係合孔を前記切欠き溝の方向に沿う長孔と

し、前記し字状の切欠き溝に対応する係合孔を他の係合孔と直交する方向に沿う長孔としたことを特徴とするガーニツシュの取付構造。

### 図面の簡単な説明

第1図および第2図はこの考案の実施例を示すもので、第1図はガーニツシュを取付部材に取付ける状態の斜視図、第2図は乗用車の後部斜視図、第3図および第4図は従来のガーニツシュの取付構造を示す断面図である。

11…ガーニツシュ、12…リテーナ、13、  
15…切欠き溝、14…クリップ、16…外板、  
17…係止脚、18、19…係合孔。

